

ADEPT
Legal Commentaries

April 2002

Parliament Activity Review 1-5 April, 2002

April 8, 2002

Upon the expiration of the time allotted by the protestors to authorities for their resignation, the organizers of the protest rallies decided to change the location of protests. The tent town moved in front of the Presidency and Parliament of the Republic of Moldova. Despite the non-stop pickets, loud music and anti-government slogans chanted by the protestors, the deputies continued their activity and managed to examine several draft laws, some of them of special importance.

Legislative acts adopted in the final reading

I. The Civil Code of the Republic of Moldova was adopted in the third and final reading.

ADEPT comment: In its final version the Civil Code will include around 1600 articles structured in 5 chapters. It is worth mentioning the stages in drafting the Civil Code of the Republic of Moldova:

- a. The Parliament Resolution on the Parliament activity in view of enforcing Constitution provisions and those of the Concept of judiciary reform, provided for the drafting of the Civil Code;
- b. Via the Parliament Resolution no.254-XIII of November 3, 1994 a working group was established to draft the Civil Code;
- c. Via the President Decree no.228 of July 7, 1997 an international expert group was established to provide a comprehensive expertise and finalize the draft Civil Code;
- d. Via the Government Resolution no. 160 of February 23, 2000 working groups were established to ensure correlation of the draft Codes (developed in a new wording), including the draft Civil Code.
- e. Via the Parliament Resolution no. 1315 of October 26, 2000 a special commission was established to finalize the Civil Code.

The draft Civil Code was examined during 2001, beginning of 2002. The Legal Commission of the Parliament submitted for examination in Parliament 5 Chapters of the Civil Code, which were adopted in the final reading on April 5, 2002.

With regard to the so quick adoption of such an important piece of legislation by the XV legislature Parliament, we could point the following:

- Adoption of the Civil Code is a huge achievement of the incumbent Parliament, and a response to the numerous urges to adopt such a law;
- Incumbent governing is trying to gradually meet all the requirements set forth by the international financial institutions for resuming their assistance (namely, adoption of a new Civil Code is one of the major conditions stipulated in the Cooperative Agreement with IMF);
- Parliament has kept its promises to pass new Codes, and will finalize the examination of the Criminal Code in the nearest future.

II. Resolution on adopting the Concept of military reform

ADEPT comment: The draft was developed in 2000, whereas its examination was adjourned for a long time without any particular reason. The Concept adopted by the Parliament:

- a. defines the notions, principles and key conditions of the military reform;
- b. describes the background for the military reform;
- c. indicates the goal and priorities of the reform and procedures of its implementation;
- d. sets the stages in carrying the military reform, a total of 12 years.

III. Law on the modification and completion of legal acts on judiciary institutions

ADEPT comment: Under the law, the Economic College is to be established within the Supreme Court of Justice, which is to examine the appeals on the decisions issued by the Economic Court of the Republic of

Moldova. In addition, the number of judges of the Supreme Court of Justice has been increased, and a new position established, namely Deputy Chair of the Supreme Court of Justice, which is to examine the economic litigation.

IV. Law on completing the Law on Government

ADEPT comment: Under the law an Agronomy & Industry Department Moldova-Vin is established in the subordination of the Government. The responsibilities of the newly established department include: developing the strategy on and projecting the development of the winery industry, enforcing new economic mechanisms, drafting a program for the development of wine market, administering wine brands in the state property, etc.

V. Law on allotting a plot from the Chisinau Municipality into the municipal property

ADEPT comment: Under the law a plot of 2,5 hectare is allotted for the construction of Bus Station for the North Region. The new station is intended to redirect the traffic and ensure a normal traffic in the center of Chisinau.

VI. Law on completing the Fiscal Code

ADEPT comment: The law sets excise to the petroleum derivatives used in the household as well as in industry.

Legal acts adopted in the first (not-final) reading

I. Draft law on theatres, circuses and concert halls

ADEPT comment: The draft law establishes the basic principles for the activity of theatres, circuses and concert halls, as well as founding, administering, funding, reorganizing, and liquidating procedures. The draft includes several chapters: General Provisions; The system of theatres, circuses and concert halls; Regulating the activity of the said institutions; Employees' social benefits, and International cooperation.

II. Draft law on the modification of Article 155³ of the Criminal Code

ADEPT comment: Currently the Criminal Code provides liability for inappropriate use of credits, for the failure to pay the credits and interests. The authors of the initiative claim that the provision runs counter to the international law, and therefore have stipulated criminal liability for the failure to meet civil obligations.

III. Parliament examined a draft law on modification of the Electoral Code.

ADEPT comment: The amendments refer in particular to:

- a. compulsory participation of the voters in elections;
- b. mixed electoral system for parliamentary elections;
- c. majority electoral system for local elections;
- d. regulating in detail constitutional referenda.

Several flaws have been identified during the examination of the draft law in Parliament, therefore it was sent back Legal Commission for improvement.

It is worth mentioning that the draft raised a lot of debates. Consequently, the issue of modifying electoral system will be in the center of attention for a while. The Parliament will reconsider the draft in the nearest future or the latest on the eve of parliamentary elections.

Parliament Activity Review 8-19 April, 2002

April 22, 2002

Political crisis triggered three months ago is currently entered the long-term negotiation stage and is unfolding not on the Chisinau streets but rather at the Council of Europe, Parliament offices and TV and Radio stations. Leaders of the opposition parliament factions have initiated talks and negotiations with the majority faction, further they have returned to plenary Parliament sessions. Generally speaking, the Parliament activity hasn't been perturbed during this time period, and legislative acts have been examined at a normal pace. Though, it is worth mentioning one of the recent developments - previously the Council of Europe used to ask in vain the Moldovan Parliament to send them the draft laws for expertise, now on the contrary the Parliament decided to submit to Council of Europe a series of legislative acts. It is very unlikely that the Council is interested in all of them as only one draft pertains to the state - opposition conflict, whereas the rest refer to some technical amendments to be operated to the current legislation.

Let's consider several most important legislative acts passed by the Parliament.

Legislative acts adopted in the final reading

I. New Penal Code of the Republic of Moldova

ADEPT comment: As it was previously mentioned the Parliament managed to adopt in a relatively short period of time the second Code on its agenda. Noteworthy, the adoption of a new Penal Code was one of the conditions set forth for the Republic of Moldova adhesion to the Council of Europe. And each and every Council's monitoring report made reference to the delay in passing such a document and the need to reform the prosecution.

The fact that Legal Commission responsible for finalizing draft Codes, has been completed with two more deputies points to the fact that the parliament majority is committed to continue examining Code of Penal and Civil procedures, Code of Administrative Offence, Code of Enforcement, etc.

II. Law on Evaluation of Assets

ADEPT comment: The law provides:

- Definitions used in assets evaluation (evaluator, certificate on qualification, evaluation report, (market, estimated) value, etc.
- Evaluation types and methods;
- Evaluation of estate in view of taxation;
- Conditions for evaluation activity;
- Local government competencies with regard to evaluation;
- Evaluator's rights and obligations.

III. Law on Settling the Debts of "Chisinau Glass Company" Ltd

ADEPT comment: The law authorizes the Ministry of Finance to transfer the company assets on credit of the arrears to the state budget, thus founding "Chisinau Glass Company" State enterprise. All the operations related to the transfer of assets shall be VAT exempt.

IV. Law on the ratification of the Memorandum between the Republic of Moldova and Republic of Croatia on mutual promotion and protection of investments

ADEPT comment: The Memorandum provides:

- Definition of "investment", "investor", "income", etc.
- Ways of promoting and allowing investments;
- Treatment of investors;

- Compensation of damages;
 - Settlement of disputes, etc.
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V. Law on the modification and completion of legislative acts on taxation of goods subject to inspection prior to expedition/dispatch

ADEPT comment: The adoption of the law is considered a step toward encouraging producers and importers of goods to the Republic of Moldova. It exempts from VAT tax the expenses for pre-expedition inspection of the imported goods.

VI. Laws on modification and completion of several legislative acts regulating the adoption procedure

ADEPT comment: Under the law, the adoption applications shall be submitted to the Court within the residence of the adopted or adopter, provided they are citizens of the Republic of Moldova. Foreign citizens shall submit the adoption application to the Court of Appeal. Also, under the law appeals to approve the adoption are exempted from the state tax.

Penal Code and Code on Administrative Offence are completed and modified so as to toughen the liability for violation of adoption procedure.

In a related note, the scandal on alleged illegal adoptions by foreign citizens initiated last year by the Information and Security Service greatly damaged the image of the Republic of Moldova abroad. The fact that the issue was considered at the highest levels made the decision-makers seriously revise the legal framework regulating adoptions and replace the old provisions with new ones.

Simultaneously, a series of administrative and bureaucracy obstacles, which made the adoption procedure so difficult and which determined a lot of candidates to give up the idea of adopting a child in the Republic of Moldova, have been abolished.

VII. Law on modification of the Law on Road Fund

ADEPT comment: Under the Law, the Government will establish the procedure of distributing the road fund, however 50% of the funds shall be allotted for the national road maintenance.

Thus, the Parliament gave up the practice of approving programs for the road maintenance and has delegated this responsibility to the Government. Noteworthy, the issues raised a lot of debates in Parliament as the respective funds were used for electioneering purposes by the local government in electoral campaigns. Under the operated modifications, deputies could no longer lobby the interests of the territories, as the Government is the one to determine where to allocate funds based on the national priorities.

VIII. Parliament Resolution on approving the membership of Creditors Council

ADEPT comment: According to the resolution, new members have been included to the Council, members who hold key positions in the administration of public funds (Ministry of Finance, etc). One of the functions of the Creditors' Council is to conclude Memorandums with enterprises having arrears to the state budget and to temporarily freeze their debts. Accordingly, the Creditors' Council has a lot of responsibility.

IX. Parliament Resolution on declaring the day of wine celebration

ADEPT comment: Under the resolution, wine celebration is to be held on last Sunday of October.

Legal acts adopted in the first (not-final) reading

I. Draft law on the modification and completion of legal acts related to the deputy status

ADEPT comment: President's initiative to amend the Law on Status of Deputy in Parliament enjoyed a large coverage last week. It raised a lot of discussions, including on submitting the draft for the Council of Europe expertise.

The drafts refer to two essential modifications and completions to the legislation in force:

1. Abolishing the current procedure, which allows lifting the deputy's mandate before its expiration, and introducing a new procedure. Thus, the draft envisages the exclusion of the following grounds for lifting the mandates:
 - Systematic and groundless absence from Parliament and Commission sessions;
 - Repeated failure to comply with the laws and Parliament resolutions;
 - Participation in the activity of anti-constitutional bodies;
 - Actions that run counter to Constitution and other laws.

Under Article 2 of the Law on the Status of Deputy in Parliament, in the above mentioned cases a deputy's mandate could be lifted by the majority vote of deputies, based on the report of an investigation commission. Under the draft developed by the Presidency, the mandate may be lifted only upon incompatibility, impossibility to exercise the function for more than 4 months, or final judicial conviction for the premeditated offences. In all the said cases, it is proposed that the Constitutional Court should lift the deputy mandate at the recommendation of the Parliament.

2. Another completion refers to Parliament hearings on Government activity, which are to be held once per session, as well as any other hearings, including those at the request of opposition.

A strange thing happened during the debates on the draft. Although the majority faction was committed to pass the draft as soon as possible (within 1-2 days), Dumitru Braghis, leader of an opposition faction in Parliament suggested to submit the draft together with some other legal acts for the expertise of the Council of Europe. Despite the fact that the whole procedure is time consuming, it is difficult to understand the opposition's position: to delay the adoption of a law providing them additional guarantees and enlarging their competencies. It seems that opposition acted strangely in this particular case.

II. Draft law on the modification and completion of the Law on Education

ADEPT comment: The draft includes new provisions on:

- Alternative education;
- Status of colleges;
- High education institutions (institute, academy, university and conservatory);
- Private institutions (functioning as non-profit institutions, based on the notification of the Ministry of Education);
- Statutory capital for the private institution - minimum 180,000 MDL;
- Status of rectors in private institutions, their employment and activity;
- Assets of the private institutions, which should meet the quality standards, etc.

The aim of the draft is to clarify the scope of work of high education institutions. It is expected that upon the adoption of the law, institutions will have to re-register and those of them, which pursue just profit making and neglect the quality of studies will have to cease their activity.

Parliament Activity Review 22-26 April, 2002

April 29, 2002

Last week public attention was focussed on Strasbourg, where Council of Europe Parliamentary Assembly debated on the report "Functioning of Democratic Institutions in the Republic of Moldova", presented by the rapporteurs on our country after their recent visit to our country. The Resolution was much debated both within the special commission as well as during plenary session.

It is worth mentioning that the representatives of the parliament majority raised the issues of bringing our country's legislation in accordance with the international standards. Thus, the Council of Europe was briefed on the lack of inconsistency between domestic legislation and international norms and that it is not the Communists' 1 year activity to be blamed but rather parliamentary activity since 1991 to nowadays. To cite only the few, Law on Political Parties, Law on the Public Reunions, Law on Deputy Status, Law on Cults, Law on Audiovisual, Regulation on Parliament Activity, and Electoral Code weren't adopted by Communists. All political parties in power from 1991 to 2001 adopted them. Once in power they tried to consolidate their positions, but now the results of their legislative activity have turned as a boomerang against them.

That is why the leader of the Communist faction was right when saying that it wasn't his faction which passed such laws. On the contrary they are ready to modify the laws so as to meet the democratic standards, a proof to their intentions is the adoption of the Code of Civil Procedure and Penal Code, on whose adoption Council of Europe insisted so much.

During this time period only one plenary session of the Parliament was held, though a series of important legislative acts had been adopted.

Legislative acts adopted in the final reading

I. Law on Production Cooperatives

ADEPT comment: During the second reading of the draft law, the Parliament Commissions read the numerous amendments to the draft, which were adopted by the deputies. It is worth mentioning the following aspects:

- The Law on Cooperative Activity will be abrogated, as all the types of cooperative activity: consumption, entrepreneurial, production are regulated via separate organic laws.
- Joint consumption and production cooperatives will be obliged to cease their activity or re-register. Upon the latter, they wouldn't have to pay an additional tax, as the re-registration will be free of charge.

Note: For further information see the Legislative Commentary, [March 25-29, 2002](#).

II. Law on modification and completion of the Real Estate Code

ADEPT comment: After the adoption of the draft in the first reading, it was submitted for the expertise of the World Bank. Then the Bank's recommendations have been incorporated in the draft. And this because the modification and completion of the Real Estate Code was one of the conditions set forth by the World Bank for resuming financial aid to the Republic of Moldova.

Note: For further details please see Legislative Commentary, [March 25-29, 2002](#).

III. Law on the Modification of the Customs Code

ADEPT comment: The law provides that duty-free shops could operate exclusively in the international airports and on board of airplanes. The goods will be sold in foreign currency only to the passengers who passed the customs control.

IV. Law on the ratification of the loan contract between KFW Germany, and S.A. "Sudzucker-Moldova"

ADEPT comment: The law ratifies a loan contract worth 10 million DM for establishing a network of technical service infrastructure. Such units will be established in 5 localities, i.e. Drochia, Alexandreni, Donduseni, Falesti, Glodeni Sugar Factories. The loan is offered for a 40 years period, with a 10-year grace period and an interest rate of 0,75% per year. S.A."Sudzucker-Moldova" will have to pay back the credit to the Ministry of Finance within 10 years, with a 3-year grace period.

V. Law on the ratification of the protocols to the Convention of 1979 on the cross-border atmosphere pollution on long distances

ADEPT comment: The law ratifies the Protocol on persistent organic pollutants and the Protocol on the heavy metals. Ministry on Environment, Constructions and Territory Development was entrusted to observe the enforcement of the said protocols.

Legal acts adopted in the first (not-final) reading

I. Draft law on canceling the penalties to the companies that paid the arrears to the social security budget

ADEPT comment: The relevant law cancels the penalties calculated in compliance with Article 24 of the Law on State Budget to more than 100 companies. The total amount of penalties exceeds 8 million Lei, whereas the amount paid by the relevant companies to the state budget reaches 39 million Lei.

II. Draft law on the modification of the Law on the Normative Price of Land and Sale-Purchase Procedure

ADEPT comment: Under the law, funds from the sale of estates in the property of administrative-territorial units will remain in the respective unit.

In addition, it is recommended to establish only the minimum ceiling for the annual lease fee for the land in public property - 2% of the normative price on land. It is suggested that the lease quota be established by local public administration according to the market value and tendencies. If the latter provision were adopted, abuses and violations would not be excluded: different quota may be established to different entrepreneurs for similar estates and of a similar quality.

III. Parliament adopted in the first reading a series of draft laws envisaging the modification of legal acts regulating pharmaceutical activity and medicines

ADEPT comment: The draft includes provisions on:

- Notions employed: authorization, expertise, confirmation, and registration of medicines;
- Procedure of authorizing pharmaceutical products;
- Medicines' quality control;
- Medicine marking and accompanying instructions.